King Tonopah Co. v. Lynch (1916), 232 F (2) 485, 489-90..... 22
Lohman v. Kansas R.R.Co. 35 S.W. (2) 112, 72 A. L. R. 172..... 17
Mullane v. Cent. Hanover Bank (1950) 339 U.S. 306, 314-15, 94 L. Ed. 865..... 22
Somerville Nat. Bank v. Hornblower 199 N.E. 918..... 19
Wirtz v. Young Elec. Co. (1963), 315 F (2) 326, 327..... 23

STATUTES AND RULES CITED

Colorado Rev. Stats. Chap. 31, Art. 2, Sec. 1 (APPENDIX "H")..... 4 & 6
Colorado Rev. Stats. Chap. 40, Art. 5, Secs. 2, 13 & 14 (APPENDIX "I")..... 4 & 6
Colorado Rules of Civ. Proc. Rule 104, Replevin..... 4,17,18
Colorado Rules of Civ. Proc. Rules 8, 12 and 56..... 6
Rules of the United States Supreme Court, Rules 19, 21 & 23..... 4 & 13
Title 28 USC 1257 (1)..... 4

MISCELLANEOUS CITATIONS

72 A. L. R. 172..... 17
46 Am. Jur. Replevin, Sec. 22..... 19

APPENDIX

The Appendix includes Petitioner's Briefs to the Colorado Supreme Court, and the Certified Record on Writ of Error No. 20678 to that Court,

and the additional APPENDICES listed as follows:

"A"--Opinion of Denver State Court..... 1 - 2
"B"--Opinion of Colorado Supreme Court..... 3 - 6
"C"--Defendants Motion to Dismiss..... 7 - 8
"D"--Pltf's. Request for Oral Hearing on Appeal to Colorado Supreme Court..... 8
"E"--Supreme Court's Denial of "D"..... 8 - 9
"F"--Defts. Request for Oral Hearing on Appeal to Colorado Supreme Court..... 9
"G"--Pltfs. Correspondence in re "F"..... 9 - 10
"H"--Colorado Corporation Stock Transfer Statute, Chap. 31, Art. II, Sec. 1..... 11
"I"--Colorado Larceny Act, Chap. 40, Art. 5, Secs. 2, 13 & 14..... 11 - 12
"J"--Colorado Constitution, Art. II, Secs. 23 & 25..... 12
"K"--Complaint in Better Industries, Inc. v. Joseph M. Brennan, No. B-45641..... 12
"L"--Plaintiff in Error Motion to amend Remittitur of Colorado Supreme Court..... 13

SUPREME COURT of the UNITED STATES

October Term 1965

No. _____

JOSEPH M. BRENNAN,

Petitioner,

vs.

CHARLES E. GROVER and JOHN E. GORSUCH, each individually, or jointly, or as agents, or partners in the Denver, Colorado law firm b/b as GORSUCH, KIRGIS, CAMPBELL, WALKER and GROVER, and JOHN DOE, JOHN ROE, JANE DOE, JANE ROE, and JOHN AND JANE ROE'S unknown at the present time,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Colorado, which affirmed the opinion of District Court in and for the City and County of Denver, Colorado.

OPINIONS BELOW

A copy of the opinion of the District Court in and for the City and County of Denver, Colorado is part of the Writ of Error Record to the Colorado

Supreme Court (R. Fol. 98). A copy of said opinion is attached hereto as APPENDIX "A".

A copy of the opinion of the Supreme Court of the State of Colorado, as entered on August 2, 1965, is attached hereto as APPENDIX "B". A copy of the Petition for Rehearing and the denial of same as entered on August 30, 1965, is attached hereto. See APPENDIX "C" page 10, in re denial.

JURISDICTION

Plaintiff-petitioner Brennan's Replevin action was filed in the District Court in and for the City and County of Denver, Colorado on October 30, 1964, which action was dismissed by said Court on December 14, 1964, without granting any hearing to said Brennan on the motion to dismiss as filed by the defendants-respondents. The opinion of the Supreme Court for the State of Colorado affirmed said Denver District Court's dismissal. The jurisdiction of this Court is invoked under Title 28 USC 1257 (1) and Rule 21 of the Revised Rules of the Supreme Court of the United States.

Petitioner Brennan's motion for oral argument on the Writ of Error to the Colorado Supreme Court (APPENDIX "D" hereto), and said Court's denial thereof (APPENDIX "E" hereto) was rendered on July 15, 1965. Matters pertaining to the motion for oral argument by the defendants-respondents on said Writ of Error could not be ascertained by said Brennan (APPENDIX "F" hereto).

QUESTIONS PRESENTED

1. Did delivery unto plaintiff-petitioner Brennan of the duly indorsed in blank certificate of stock convey to and vest in said Brennan the absolute ownership of the personal property, viz, the particular piece of paper consisting of said indorsed in blank certificate of stock, including what is represented thereby?

2. Did delivery unto plaintiff-petitioner Brennan of the duly executed, verified and irrevocable sale and assignment instrument concerning the specified certificate of stock, convey to and vest in said Brennan the absolute ownership of the personal property, viz, the particular piece of paper consisting of said duly executed sale and assignment instrument?

3. If plaintiff-petitioner Brennan was the owner of the personal property, viz, each of said indorsed in blank certificates of stock, and, each of said duly executed, verified and irrevocable sale and assignment instruments, subsequent to said Brennan's receipt of same from the registered stockholders in 1954, was said Brennan possessed of the rights as follows:

(a) The right to institute a replevin action to recover plaintiff-petitioner Brennan's said stolen personal property, under the provisions of the pertinent Statutes and Rules of Civil Procedure of the State of Colorado, and the Constitutions of the State of Colorado and the United States and the Bill of Rights? And,

(b) The absolute right to be duly notified of and granted a hearing on the motion of defendants-respondents to dismiss said Brennan's replevin action and complaint, for failure to state a claim upon which any relief could be granted? And,

(c) If the said Denver District Court dismissed said Brennan's replevin action in denial of his right to a full and proper hearing on defendants-respondents said motion to dismiss said replevin action, was plaintiff-petitioner Brennan thereby denied the due process of law in recovery of his said stolen personal property, and incidentally caused impending and irreparable injury and loss thereof?

STATUTES, RULES OF CIVIL PROCEDURE, CONSTITUTIONS OF COLORADO AND THE UNITED STATES INVOLVED.

The pertinent portions of the Revised Statutes of the State of Colorado are set forth in petitioners Opening Brief to the Colorado Supreme Court appended hereto on the referenced pages, viz, Chap. 31, Art. II, Sec. 1 at page 8* (and APPENDIX "H" hereof); Chap. 40, Art. 5, Secs. 2, 13 & 14 at page 9 (and APPENDIX "I" hereof); Rule 104 of the Colorado Rules of Civil Procedure at page 10 REPLEVIN PERSONAL PROPERTY;Title 28 USC 1257 (1) and Rules 19, 21 & 23 of the Revised Rules of the Supreme Court of the United States; the Seventh and Fourteenth Amendments, and Secs. 23 & 25 of Art. II of the Constitution of the State of Colorado and the Bill of Rights, at page 14.

* Uniform Stock Transfer Act as adopted by Colorado.

STATEMENT

During July, August and September, 1954, certain duly indorsed in blank certificates of stock in Rock Wool Insulating Company were delivered to plaintiff-petitioner Brennan by the registered stockholders thereof, together with the simultaneous delivery of certain duly executed and irrevocable instruments of sale, assignment and transfer of all rights, title and interest in and to each of said certificates of stock.

Thereupon, plaintiff-petitioner Brennan became absolute owner and possessor ef each of the pieces of paper, viz: (1) Each of said indorsed in blank certificates of stock; and, (2) Each of said duly executed and irrevocable stock sale, assignment and transfer instruments pertinent to each of said certificates of stock.

Facsimile photo copies of each of said documents are appended to the OPENING BRIEF OF PLAINTIFF IN ERROR (as submitted herewith) and as marked therein as: EXHIBITS "A" & "A-1", "B" & "B-1", "C" & "C-1", "D" & "D-1".

The originals of each of said documents remained in plaintiff-petitioner Brennan's possession, as his personal property, at all times since the delivery thereof to him by the registered stockholders in 1954, until all of said documents were stolen from him sometime in 1957 or 1958.

Plaintiff-petitioner Brennan's said stolen personal property consisting of said documents, were in the possession of defendants-respondents, when said Brennan instituted his replevin action

in the District Court in and for the City and County of Denver, Colorado, on or about October 30, 1964, against defendants-respondents for the recovery of said stolen personal property.

Said replevin action was brought pursuant to the provisions of the Colorado Revised Statutes, viz: Chap. 31, Art. II, Sec. 1 (APPENDIX "H"); and, the Colorado Rules of Civil Procedure, particularly, but not limited to Rules 12, 56 and 104; the Seventh and Fourteenth Amendments of the Constitution of the United States and the Bill of Rights; and, Secs. 23 & 25 of the Constitution of the State of Colorado (APPENDIX "J").

After delivery of each of said certificates of stock unto plaintiff-petitioner Brennan, he was lawfully empowered to exercise the Power of Attorney as unconditionally granted by the indorsement signature thereon, viz: (1) To write in his name on each of said certificates of stock; and, (2) to surrender same for cancellation and the issuance of new certificates of stock in the name of plaintiff-petitioner Brennan, in place thereof. However, said Brennan refrained from such action by reason of the circumstances, stated as follows:

On May 12, 1954, at a duly called for and held meeting of the Rock Wool Insulating Company Board of Directors, plaintiff-petitioner Brennan was duly elected a Director and the Secretary-Treasurer of said company, at which time and subsequent thereto, said company's books and property was in the possession of a usurper, viz, Herbert F. Korholz, and resultant thereof said company's Directors and Officers were inhibited by said Korholz, in the rightful performance of their

official corporate duties. Consequently, plaintiff-petitioner Brennan was necessarily constrained to retain each of said certificates of stock in their said indorsed in blank status, subsequent to the delivery thereof to him in 1954, and until same were stolen from him in 1957 or 1958.

In 1959, certain of Rock Wool Insulating Company stockholders were prosecuting a derivative suit in the United States District Court for the District of Colorado, against the said usurper, viz, Herbert F. Korholz, and wherein the defendants-respondents were employed by said Korholz as his legal counsel of record in said suit.

However, in 1959, the defendants-respondents secretly connived and conspired to obtain possession of said stolen indorsed in blank certificates of stock, also possession of said duly executed and irrevocable stock sale and assignment instruments, from the party that stole all of said personal property from plaintiff-petitioner in 1957 or 1958.

In 1959 when defendants-respondents acquired possession of said stolen certificates of stock, they had full knowledge that same had been stolen from said Brennan in 1957 or 1958. However, in an illicit design to obliterate said Brennan's rights therein, the defendants-respondents also acquired illicit possession of said Brennan's other said stolen personal property, viz, said duly executed and irrevocable sale, assignment and transfer instruments, which conveyed to and vested in plaintiff-petitioner Brennan all rights, title and interest in said certificates of stock.

On March 31, 1960, defendants-respondents as attorneys for said Korholz perpetrated a purported merger of Rock Wool Insulating Company into MPM Investment Company, and on December 31, 1960, the merger of said MPM Company into Better Industries, Inc., both of which two latter companies were wholly owned by said Korholz's family, and wherein the said certificates of stock as stolen from plaintiff Brennan were involved.

On April 20, 1961, defendants-respondents as said Korholz's attorneys filed a suit against plaintiff-petitioner Brennan in the District Court in and for the City and County of Denver, Colorado, viz, No. B-45641, Better Industries, Inc, vs. Brennan, et al (APPENDIX "K" herein).

The facts concerning said Better Industries, Inc. lawsuit No. B-45641 in said Court, against plaintiff-petitioner, and the unindorsed certificate of stock No. 55 in said Brennan's name, are:

(1) That the complaint in suit No. B-45641 (APPENDIX "K" herein) reveals an illicit connivance of Better Industries, Inc. and its agents with a party, viz, Anthony E. Reilly, concerning said certificate of stock No. 55, and

(2) That said Reilly had stolen said Certificate of stock No. 55 from plaintiff-petitioner Brennan in 1957 or 1958; that said Reilly had also thereupon stolen from said Brennan all of the aforesaid indorsed in blank certificates of stock, and said executed and irrevocable sale and assignment instruments; and, that said Reilly had delivered all of the aforesaid stolen personal property of said Brennan to defendants-respondents in 1959, and,

(3) That said suit No. B-45641 was to be tried by jury; that same was dismissed without according to defendant Brennan therein any proper hearing; that same was dismissed in violation of the applicable Rules of Civil Procedure; that no judgment concerning said Certificate of stock was entered; that the judgment entered therein went beyond the pleadings of the plaintiff - Better Industries, Inc.; and that any judgment therein was procured by extrinsic fraud; and, that any judgment therein is null, void and of no effect, and

(4) That the opinions of both said District State Court and the Colorado Supreme Court appear to be predicated upon the ruling in said Better Industries, Inc. case No. B-45641 of said Denver District State court, and consequently are unfounded in fact or law, and wherein the absolute ownership of plaintiff-petitioner Brennan's said rights, title and interest in and to said indorsed certificates of stock and said executed and irrevocable sale and assignments thereof, are completely misconstrued or ignored, as evinced by the following events, viz:

In the United States District Court for the District of Colorado, certain suits concerning certain of said indorsed in blank certificates of stock and certain of said executed and irrevocable sale and assignments thereof, as were delivered to plaintiff-petitioner Brennan in 1954, and as stolen from him in 1957 or 1958, as aforesaid, and also, concerning said <u>unindorsed</u> certificate of stock No. 55, registered in the name of said Brennan (plaintiff-petitioner), viz:

Replevin suit No. 7754, filed on October 8, 1962, in said U. S. District Court, Denver, Colorado - Brennan v. Sellers, trial to jury on February 1 & 2, 1965, in re: Recovery of Rock Wool Insulating Company indorsed in blank certificate of stock No. 1, and the pertinent executed and irrevocable sale and assignment instrument, as were stolen from said Brennan subsequent to the delivery thereof unto said Brennan in 1954, by said Sellers, and wherein the jury found that:

"THE ISSUES WERE JOINED IN FAVOR OF PLAINTIFF JOSEPH M. BRENNAN AND AGAINST DEFENDANT BERTHA E. SELLERS, AND ASSES THE DAMAGES IN THE SUM OF $53,135.00." This matter is now on appeal to the United States Court of Appeals for the Tenth Circuit.

Replevin suit No. 7958, filed on April 4, 1963, in said U. S. District Court, Denver, Colorado - Brennan vs. Reilly, trial to jury on February 3 & 4, 1965, in re: Recovery of Rock Wool Insulating Company unindorsed certificate of stock No. 55, registered in the name of Joseph M. Brennan (the plaintiff-petitioner herein) and which said certificate of stock was stolen from said Brennan by said Reilly, and wherein the jury found that:

"THE ISSUES WERE JOINED IN FAVOR OF PLAINTIFF JOSEPH M. BRENNAN AND AGAINST DEFENDANT ANTHONY E. REILLY AND ASSESSED THE DAMAGES IN THE SUM OF $30,000.00."

Prior to August 2, 1965, when the Colorado Supreme Court rendered its opinion (APPENDIX "B") affirming the opinion of said Denver State Dist-

rict Court (APPENDIX "A") in re: Said Replevin suit No. B-76366, Brennan v. Grover, et al, the Colorado Supreme Court had full knowledge of, and the import of matters pertaining to the Rock Wool Insulating Company certificates of stock as owned by said Brennan and involved in the said Replevin suits No'd. 7754 & 7958 in the United States District Court for the District of Colorado.

STATE OF THE PROCEEDINGS AND MANNER IN WHICH THE FEDERAL QUESTION - DENIAL OF DUE PROCESS-, SOUGHT TO BE REVIEWED, WAS RAISED IN THE STATE COURTS.

The first opportunity available to plaintiff-petitioner Brennan in the State Courts to raise the Federal Question - Denial of Due Process, was in his Briefs in Appeal No. 21678 on Writ of Error to the Colorado Supreme Court, viz, in "OPENING BRIEF OF PLAINTIFF IN ERROR" (nine copies thereof submitted herewith) at pages 4 & 14 therein; and, in "REPLY BRIEF OF PLAINTIFF IN ERROR" (nine copies thereof submitted herewith) at pages 3 to 6 therein.

The Colorado Supreme Court reference to plaintiff-petitioner Brennan's said Denial of Due Process, is stated on page one of that Court's opinion, to wit:

"HE CLAIMS, AMONG OTHER THINGS, THAT THE DISMISSAL OF HIS COMPLAINT ON MOTION DENIED HIM DUE PROCESS OF LAW" (APPENDIX "B", page 1).*

*See: Motion to amend Remittiur (APPENDIX "L").

DENIAL OF NOTICE & HEARING ON MOTION TO DISMISS

Plaintiff-petitioner Brennan was precluded in raising the Federal Question - Denial of Due Process in said Denver State District Court in his Replevin suit, viz, No. B-76366, Brennan v. Grover et al, therein, by reason of factors as follows:

On November 20, 1964, said Denver State District Court found plaintiff-petitioner Brennan guilty of contempt of court in said No. B-45641, Better Industries, Inc. v. Brennan suit in said Court, by said Brennan "causing to be filed on October 20, 1964, the Replevin suit No. B-76366, Brennan v. Grover, et al (R. Pols. 1 to 22)."

PLAINTIFF-PETITIONER BRENNAN'S SAID REPLEVIN SUIT NO. B-76366, BRENNAN V. GROVER, ET AL, WAS SUMMARILY AND ABRUPTLY DISMISSED WITHOUT ANY NOTICE OF, OR ANY HEARING THEREON GIVEN TO SAID BRENNAN

On December 14, 1964, said Replevin suit No. B-76366, Brennan v. Grover, et al, was abruptly and summarily dismissed, when said Brennan surrendered to the Denver County Sheriff to begin the serving of the 30 days jail sentence imposed upon him for contempt of court in suit No. B-45641. Then, said Brennan was ordered to appear immediately before said Denver State District Court, whereupon, said Brennan's suit No. B-76366, was summarily dismissed without any hearing, and, said contempt of court and said jail sentence was vacated, subject to reinstatement at any time in the future by said Court.

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

Dismissal of plaintiff-petitioner Brennan's said Replevin suit No. B-76366, on defendants-respondents motion to dismiss said suit for failure to state a claim upon which any relief could be granted, violated said Brennan's constitutionally protected rights and vested property interests in and to his said stolen personal property, wherein among other matters and things, plaintiff-petitioner Brennan was injured, as follows, viz:

I. Denied his rights under the Uniform Stock Transfer Act as adopted by the State of Colorado.

II. Denied his rights under the provisions of the Fourteenth Amendment of the United States Constitution, and Art. II, Sec. 25 of the Constitution of the State of Colorado.

III. Denied his rights under the provisions of the Seventh Amendment of the Constitution of the United States, and the Bill of Rights.

IV. Denial of his rights under the Statutory provisions of the State of Colorado concerning recovery of his stolen property.

V. Denial of Notice and Hearing on said motion to dismiss his said Replevin suit.

ARGUMENT

Pursuant to the United States Supreme Court Rules 19(a) and 23(h), petitioner hereby shows that by dismissal of his said Replevin suit No.

B-76366, Brennan v. Grover, et al, by the Courts in the State of Colorado, petitioner Brennan was denied his constitutionally protected rights, and the due process of law.

I. STOCK TRANSFER ACT-EQUAL RIGHTS THEREUNDER

The Uniform Stock Transfer Act as adopted by the State of Colorado (APPENDIX "H") establishes the only method of transferring title to a certificate of stock and what is represented thereby. This has been definitely settled in the case of Brennan v. Wills, Ltd. (1957) CCA 10, 263 F (2) 1, 2, Cert. den. 360 U. S. 902, 79 S. Ct. 1284, 3 L. Ed. (2) 1254. And, as consistently followed by the Colorado Supreme Court. See - Goedell v. Aircraft Finance Co. (1963) - Colo - 382 P (2) 812, 814, citing Brennan v. Wills, Ltd case.

It is patent that title to the specified Rock Wool Insulating Company indorsed in blank certificates of stock, as shown by the facsimile photo copies thereof as appended to "OPENING BRIEF OF PLAINTIFF IN ERROR", was vested in and conveyed to petitioner Brennan upon delivery thereof to him in 1954.

It is also patent that absolute ownership of the specified and pertinent sale and assignments of the certificates of stock, as shown by the facsimile photo copies thereof as appended to "OPENING BRIEF OF PLAINTIFF IN ERROR", was vested in and conveyed to petitioner Brennan upon delivery thereof to him in 1954.

II. DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS OF LAW DIRECTLY VIOLATES THE CONSTITUTIONS OF THE UNITED STATES AND THAT OF THE STATE OF COLORADO.

The Fourteenth Amendment of the United States Constitution, and Art. II, Sec. 25 of the Constitution of the State of Colorado were violated by said State Court's summary dismissal of Petitioner's said Replevin suit No. B-76366, Brennan v. Grover, et al. Thereby, petitioner was unjustifiably deprived of his said personal property without due process of law.

III. DUE PROCESS INCLUDES RIGHT OF JURY TRIAL AS PROVIDED BY THE SEVENTH CONSTITUTIONAL AMENDMENT.

The Seventh Amendment of the Constitution of the United States was violated when plaintiff was deprived of his said personal property, by said Court's summary dismissal of petitioner's said Replevin suit No. B-76366, and denial of the due process of law thereby.

IV. DUE PROCESS OF LAW INCLUDES THE RIGHT TO AN ACTION UNDER THE PERTINENT STATUTORY PROVISIONS.

The due process of law was violated when said Replevin suit No. B-76366 was summarily dismissed in denial of petitioner's rights to recover his stolen personal property under the provisions of the Colorado Larceny Act (APPENDIX "I" herein). Therein, petitioner possessed a Statutory right to institute an action against the felon, or any person possessing his stolen personal property.

Said Larceny Act (APPENDIX "I") clearly says that a certificate of stock, or any muniment of title, or any written paper of value to the owner constitutes personal property, and, Rule 104 of the Colorado Rules of Civil Procedure, in accordance with the underlying statute, provides for a Replevin action to regain possession of any stolen personal property, as aforesaid, from either the felon, or any person in possession thereof.

Petitioner therefore had an absolute right to Replevin said pertinent duly executed stock sale and assignment instruments (EXHIBITS "A-1", "B-1", "C-1" & "D-1", appended to "OPENING BRIEF OF PLAINTIFF IN ERROR), which documents became his absolute and exclusive personal property upon delivery to him 1954, and which were stolen from him in 1957 or 1958, and which were in possession of the defendants-respondents when he filed his Replevin suit No. B-76366, Brennan v. Grover, et al, and allegations pertinent thereto incorporated in his complaint therein.

Petitioner also possessed his aforesaid right to independently recover his stolen personal property, viz, the certificates of stock (EXHIBITS "A", "B", "C" & "D", as appended to "OPENING BRIEF OF PLAINTIFF IN ERROR", and as properly pleaded in his said Replevin suit No. B-76366.

In Discontc - Gesellschaft v. U. S. Steel Corp. (1925) 267 U. S. 22,28, 69 L. Ed. 295, 45 S. Ct. 207, it is clearly established:

(1) That share of stock in a corporation, represented by certificates of stock, constitutes

property in themselves, and not merely evidence of ownership. And,

(2) That it recognizes as owner anyone to whom the person declared by the paper to be the owner has transferred it by the indorsement in blank provided for. And,

(3) That it does not depend upon the holder's having given value, but upon the things done by the indorsement on the back of the certificate, viz, the assignment and power of attorney to transfer the shares.

To the same effect, citing, the Disconto case, supra, In re De Lamos Estate, 315 P (2) 611, 627, (1957), citing, Lohman v. Kansas City R.R. 33 S. W. (2) 112, 72 A.L.R. 172, wherein it is said that certificates of stock must be regarded as having the character of personal property in themselves.

THE INDORSED IN BLANK CERTIFICATES OF STOCK WERE SOLD AND DELIVERED TO PETITIONER IN 1954

Significantly, each of the pieces of paper, viz, said indorsed in blank certificates of stock, which incorporated the power of attorney to transfer title thereto unto petitioner, were delivered to petitioner in 1954, and remained in his possession until stolen from him in 1957 or 1958.

TITLE TO THE UNDELIVERABLE INTANGIBLE CORPORATE STOCK WAS NOT SOUGHT IN ANY SUIT AT ANY TIME

Rule 104 of the Colorado Rules of Civil Procedure provides for the replevin by jury trial of wrongfully withheld personal property, for

damages for the retention thereof; and, for the value thereof and damages if delivery is not or cannot be made.

In consonance with Rule 104 of the Colorado Rules of Civil Procedure and its Revised Statutes, as set forth in APPENDIX "H", "I" & "J", petitioner instituted his Replevin suit No. B-76366, Brennan v. Grover, et al (R. Fols. 1 to 22), in accordance with the necessary and required pleadings, as approved in the case of Blackmer v. Blackmer, 87 Colo. 483, 239 P 366, 367, which was a replevin action to recover certificates of stock wrongfully withheld, and wherein the court said:

"The complaint alleged plaintiff's ownership and the right of possession and unlawful detention by the defendant * * * The allegations state a cause of action * * * and the demurrer to it was properly overruled."

As stated in Brennan v. Wills, supra, pages 4 - 5, Judge Huxman said:

"I fail to see where the title to stock or the transfer of title under the Colorado Certificate Stock Transfer Act * * * is a factor in this case. This is not a case involving the title or ownership of the 50 shares represented by Certificate No. 46. * * *
"This is strictly a replevin action in which plaintiff seeks to recover a specific piece of paper, to wit: Stock Certificate No. 46. * * *
"All that is necessary for him to allege or to establish in order to prevail is that he is entitled to the possession of the stock certificate, that it is unlawfully withheld from him,

that demand has been made for its surrender and that compliance with such demand has been refused, and this the petition does.

"While the authorities hold that title or ownership of shares of stock represented by a certificate may not be raised in a replevin action, they do hold, so far as I can find, without exception, that the right to recover a specific stock certificate is the proper subject for such an action." * * *

"46 Am. Jur., Replevin, Sec. 22 states, Replevin, or equitable replevin, may be maintained for a certificate of stock, where the object is to regain possession of the specific paper, and not to test the right to the property which it represents. In Somerville National Bank v. Hornblower (Mass) 199 N. E. 918, while the court held that stock in a corporation could not be recovered by replevin, it did hold that a specific stock certificate could be so recovered. The Court said, 'Replevin, or equitable replevin may be maintained for a certificate of stock.' In Campbell v. Brooks, 47 So. 545 (Miss), the court recognized 'that a writ of replevin will lie for the recovery either of deeds or certificates of stock, where the object is to regain possession of the specific paper and not to test the right to the property which it represents.' In Bush v. Hillman Land Co., 2 Alt. 2d 133 (Del), the court held that replevin would lie to recover a specific stock certificate."

PETITIONER HAS NEVER INSTITUTED A SUIT TO QUIET TITLE, OR TO TRY TITLE TO ANY CORPORATE STOCK.

It is patent that petitioner's suit - Brennan v. Grover, et al, No. B-76366 is a replevin suit;

and, that the objective thereof was to recover each of the papers, viz, the specified certificates of stock, and to recover each of the specified pertinent stock sale and assignment instruments, copies of each of which papers are appended to "OPENING BRIEF OF PLAINTIFF IN ERROR" marked as EXHIBITS "A", "B", "C" & "D" therein.

JUDGMENT IN CASE NO. B-45641, BETTER INDUSTRIES, INC. V. BRENNAN WAS PROCURED BY EXTRINSIC FRAUD.

The judgment in Case No. B-45641, Better Industries, Inc. v. Brennan, was procured by extrinsic fraud. The case was summarily dismissed without granting to defendant Brennan (petitioner) any opportunity for a proper hearing. The judgment therein culminated in an abortive attempt of Better Industries, Inc. to gain possession of said certificate of stock No. 55, as continuously registered in Brennan's name since April, 1954.*

Although the complaint (Appendix "K") in said case No. B-45641 is exclusively confined to said certificate of stock No. 55, and nothing more was before the Court, it appears that the opinions (APPENDIX "A" & "B" herein) are predicated thereon, and on matters that were neither pleaded, nor tried. Consequently, it was incumbent upon petitioner Brennan to institute his Replevin Suit No. B-76366, Brennan v. Grover, et al, to acquire the possession of his stolen personal property in the possession of said defendants (respondents herein).

*See page 10 herein, in re: Brennan v. Reilly in the U. S. District Court at Denver, concerning verdict on February 3 & 4, 1965, concerning the unindorsed certificate of stock No. 55.

V. DUE PROCESS OF LAW WAS DENIED PETITIONER WHEN HIS REPLEVIN SUIT AND COMPLAINT WERE DISMISSED.

Dismissal of plaintiff-petitioner Brennan's Replevin suit No. B-76366, Brennan v. Grover, et al, upon defendants-respondents motion to dismiss for failure to state a claim upon which any relief could be granted, without proper notice of a hearing thereon, or the granting of any hearing thereon to plaintiff-petitioner Brennan, violated and denied said Brennan the due process of law.

It is well settled that due process of law involves and implies the right to be heard, In Galpin v. Page (1872) 85 U.S. 350, at page 368, the Court said:

"It is a rule as old as law, and never more to be repeated than now, that no one shall be personally bound until he has his day in court, by which is meant, until he has been afforded an opportunity to be heard. Judgment without such opportunity, wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and can never be upheld where justice is justly administered."

A TRIAL COURT VIOLATES DUE PROCESS BY RENDERING AN ADVERSE JUDGMENT AGAINST A PARTY SOLELY FOR PUNISHMENT FOR CONTEMPT

Denver State Court's dismissal of Replevin suit No. B-76366, Brennan v. Grover, et al, (APPENDIX "A"), appears to involve a contempt of that Court, in the suit of Better Industries, Inc. v. Brennan, No. B-45641 (APPENDIX "K"), and wherein said Brennan was also denied a hearing, before the summary disposal thereof.

In Hovey v. Elliott (1897), 167 U.S. 409, 42 L. Ed. 215, 17 S. Ct. 841, it was held:

That one in contempt could not be refused his rights under any Statute invoked by him (such as the Colorado Larceny Act (APPENDIX "I"), as cited in "OPENING BRIEF OF PLAINTIFF IN ERROR", at page 9 therein, nor has the Court power to strike his pleadings or dismiss his action, holding that it is of paramount importance that a party's fundamental constitutional rights must be and should be protected. To the same effect in King Tonopah Co. v. Lynch (1916) 232 F. 485, 489-90, wherein the Court held:

That the State possesses no power or right to nullify or abridge the Constitution, and that this principle is illustrative in those cases where it has been held that contemptuous conduct or disobedience on the part of a party cannot be punished by striking such party's pleadings from the files, or dismissing the action. If punished, it must be in some other mode than by taking away his constitutional rights to be heard before being deprived of his property.

In Covey v. Somers (1955), 351 U.S. 141, 146, 100 L. Ed. 1021, 76 S. Ct. 724, citing Mullane v. Cent. Hanover Bank (1950), 339 U.S. 306, 314-5, 94 L. Ed. 865, 70 S. Ct. 652, the Court said:

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections (numerous citations)."

In Wirtz v. Young Elec. Sign Co. (1963), 315 F (2) 326, 327, the Court said:

"If the trial court based its judgment of no cause of action upon a conclusion of law that present compliance is a complete bar to injunctive relief sought by the Secretary upon claim of earlier violations * * * If so presumed the judgment is faulty, for summary disposition requires the total absence of a disputed issue of fact."

In Counsel of Fed. Organs, v. U.S. District Judge for So. Dist. of Miss. (1964), CCA 5, 339 F (2) 898, 900, citing Reynolds v. Cochran, supra, and, Hovey v. Elliott, supra, the Court held:

That in the absence of a hearing and an opportunity to be heard, complaint should not have been dismissed for failure to state a claim. The right of a litigant to be heard is one of the fundamental rights of due process of law.

CONCLUSION

Ownership of the papers, viz, the certificates of stock and the sale and assignment instruments was vested in petitioner upon delivery to him in 1954. The nature and effect of dismissal of petitioner's replevin suit by said State Courts, has irretrievably divested petitioner of his said personal property without due process of law, and in violation of the Seventh and Fourteenth Constitutional Amendments. For the reasons as set forth above, it is respectfully submitted that this petition for writ of certiorari be granted.

Joseph M. Brennan, Petitioner, Pro se,
P.O. Box 1115, Denver 1, Colorado

A P P E N D I X

THE COMPLAINT IN REPLEVIN

The original complaint in replevin was filed by plaintiff-petitioner Brennan in the District Court in and for the City and County of Denver, State of Colorado on October 30, 1964, viz, Case No. B-76366 - Brennan vs. Grover, et al. It consisted of nine causes of action wherein plaintiff-petitioner Brennan sought recovery of his stolen personal property in the possession of the defendants-respondents (R. Fols. 1 to 22).

PROCEEDINGS IN RE: DISMISSAL OF CASE NO. B-76366

On November 9, 1964, defendants-respondents filed a motion to dismiss said Case No. B-76366 for failure to state a cause of action upon which any relief could be granted (R. Fol. 23). Incident thereto, and on December 14, 1964, the said Denver District Court "DISMISSED WITH PREJUDICE" said Case No. B-76366, and to wit:

APPENDIX "A"

IN THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER, STATE OF COLORADO.

* * * (Caption - Civil Action No. B-76366) * * *

DISMISSAL OF COMPLAINT WITH PREJUDICE

Entered on December 14, 1964

HERETOFORE, on the 12th day of November, 1964, this Court ordered Joseph M. Brennan, as Defendant in Civil Action No. B-45641 entitled Better Industries, Inc. v. Joseph M. Brennan, Anthony E. Reilly

and Frances E. Morrissey, to appear before this Court at 9:00 o'clock a.m. on November 20, 1964 to show cause why the said Joseph M. Brennan should not be punished for contempt of Court because of his misconduct in failing to obey, comply with and carry out the provisions of the final decree duly entered in said Civil Action No. B-45641 on the 24th day of June, 1963; and

On November 20, 1964, this Court found the said Joseph M. Brennan in contempt of Court in causing to be filed on or about October 21, 1964, the Complaint in the above-captioned cause, Civil Action No. B-76366; and

The Court having examined the Complaint on file in this Civil Action No. B-76366 and being fully advised in the premises,

DOTH ORDER, ADJUDGE AND DECREE that this Civil Action No. B-76366 shall be and hereby is dismissed with prejudice, the said Joseph M. Brennan to pay the cost thereof.

DONE IN OPEN COURT this 14th day of December, 1964.

BY THE COURT:

(Signed) Paul Pinchick

Saul Pinchick, Judge

APPENDIX "B"

IN THE SUPREME COURT STATE OF COLORADO
No. 21678

JOSEPH M. BRENNAN,
Plaintiff in Error,
v.
CHARLES E. GROVER, et al,
Defendants in Error.

Error to the District Court of the City and County of Denver. Hon. Saul Pinchick, Judge

EN BANK **JUDGMENT AFFIRMED**
MR JUSTICE SUTTON DELIVERED THE COURT'S OPINION

Plaintiff in error, Brennan, plaintiff in the trial court, seeks relief in a pro se appearance by writ of error from a dismissal on motion of his complaint in which he sought to replevy certain corporate stock certificates from the defendants in error.

On previous occasions Brennan unsuccessfully litigated title to certain stock certificates in the Rock Wool Insulating Company in both the Colorado State and United States Courts of Colorado. His present contention, however, in essence is that he can maintain an action in replevin for the stock against certain of the attorneys of the parties previously sued as well as against several unknown persons. He claims, among other things, that the dismissal of his complaint on motion denies him due process of law; and, he further alleges that the trial court could not properly consider the results of other indep-

endent actions wherein it was determined Brennan had no title to the stock in question. We note that none of the parties previously held to be owners of the stock is named as a party defendant in this action.

One difficulty with Brennan's briefs and argument here is that none of his cited authorities applies to the facts of this case for reasons that hereinafter appear.

In Brennan v. City and County of Denver, et al., _____Colo._____, 397 P. 2d 876 (1964) in regard to Brennan's claim of ownership of the certificates in question we stated in part:

> "*** the record shows that the issue of Brennan's ownership has not only been finally determined in the state courts but that Brennan has also previously litigated in federal courts with various parties about this matter twelve different times, and, has been enjoined by the United States District Court of Colorado from filing any further such actions without first securing approval of the presiding judge of that court. *** We find then that the question of plaintiff's interest in the stock is res judicates in a rather overwhelming fashion."

Preceding the instant action in the District Court of the City and County of Denver, in a separate case (Civil Action No. B-45641) decided June 24, 1963, it appears that it was determined that Brennan had no interest in the Rock Wool Insulating Company "and that the Defendants (one of whom was Brennan) be and they hereby are enjoined from making any such claim."

Nevertheless, Brennan proceeded by this District Court action in replevin (Civil Action No. B-76366), to sue the attorneys of the parties in Case No. B-45641 and was later found in contempt of court in so doing. His thirty day jail sentence was indefinitely postponed on condition that he desist in his actions and dismiss No. B-76366 -- this replevin action. This he has refused to do.

Obviously, the current suit is an unwarranted collateral attack upon the judgment in Civil Action No. B-45641 as previously decided in the trial court and upon earlier judgments which have finally and conclusively determined title to the stock.

A losing party cannot re-litigate the issue of title to property previously decided against him by using the devious route of suing his previous opponent's attorneys to obtain the property. A judgment is not subject to collateral attack where the court had jurisdiction of the subject matter and the parties. 30A Am. Jur., Judgments § 844; 49 C.J.S., Judgments § 401; Cherry Hill v. The Benevolent League of Colorado Travelers Ass'n., 133 Colo. 349, 295 P. 2d 231 (1956).

A collateral attack on a judgment has been defined as "an attempt to avoid, defeat or evade it, or deny its force and effect, in some incidental proceeding not provided by law * * *." 49 C.J.S., Judgments § 408b.

As to Brennan, his claim to title to the stock certificates in question has long been res judicata and his replevin action against the winners attorneys is both vexatious and harassing.

It is clearly at odds with the doctrine of res judicata which is meant to put an end to strife and litigation once the parties have had a judicial determination of their controversy. Although res judicata is usually effective only between parties to former actions governing the same subject matter, we hold that it also encompasses the attorneys of the parties to such prior litigation, who were not parties thereto and had no personal interest in the litigation, such as under the circumstances of this case where it has previously been determined that Brennan had no title to the stock he seeks to replevy. See: Hudson v. Western Oil Fields, 150 Colo. 456, 374 P. 2d 403 (1962); and compare: 30A Am. Jur., Judgments § 431 and cases cited therein and annotated cases cited in 137 A.L.R. 586 et seq. The trial court thus was eminently correct in applying this doctrine to the instant suit and in holding Brennan in contempt of court for filing and pursuing this action.

In the future Brennan should be enjoined by the trial court from bringing any further or additional actions of any kind in regard to his now voided claim of ownership of the stock certificates without first securing the written consent thereto of the presiding judge of the Denver District Court and making his appearance by a duly licensed Colorado attorney.

Affirmed.

APPENDIX "C"

IN THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER AND STATE OF COLORADO

*** * *(Caption-Civil Action No. B-76333)* * ***
(Filed November 9, 1964)

MOTION TO DISMISS

COME NOW the Defendants in the above-captioned cause, Charles E. Grover and John E. Gorsuch, individually and as partners in Gorsuch, Kirgis, Campbell, Walker and Grover, and respectfully move that this Honorable Court enter its order herein dismissing the Plaintiff's Complaint.

AND AS GROUNDS FOR SAID MOTION shows the Court that the causes of action alleged in said Complaint, first through ninth, fail to state a claim for which the relief asked for, or any relief, may be granted.

GORSUCH, KIRGIS, CAMPBELL, WALKER AND GROVER

By: (signed) Charles E. Grover
Charles E. Grover, Pro se and for the firm

By: (signed) John E. Gorsuch
John E. Gorsuch, Pro se and for the firm
1900 Security Life Building
Denver, Colorado 80202 222-8631

Address of Defendants
1900 Security Life Building
Denver, Colorado 80202

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9th day of November, 1964, I served a copy of the within Motion to Dismiss upon the Plaintiff, Joseph M. Brennan, by mailing a copy thereof, postage prepaid, to Joseph M. Brennan, P.O. Box 1115, Denver, Colorado 80201

(signed) C. E. Eckerman

APPENDIX "D", "E", "F" & "G"

IN RE MATTERS CONCERNING THE WRIT OF ERROR TO THE COLORADO SUPREME COURT, SEE, APPENDIX "D" - PLAINTIFF IN ERROR BRENNAN'S REQUEST FOR ORAL HEARING; APPENDIX "E" - THE COURT'S DENIAL THEREOF; APPENDIX "F" DEFENDANTS IN ERROR REQUEST FOR ORAL HEARING; AND, APPENDIX "G" IN RE: DENIAL OF INFORMATION TO PLAINTIFF IN ERROR BRENNAN CONCERNING THE REQUEST FOR ORAL ARGUMENT OF DEFENDANTS IN ERROR.

APPENDIX "D"

COLORADO SUPREME COURT

Brennan v. Grover, No. 21678, July 12, 1965

REQUEST FOR ORAL HEARING OF PLAINTIFF IN ERROR

COMES NOW, Joseph M. Brennan, Plaintiff in Error, and requests that the Court grant him an oral argument in the above entitled cause.

(signed) Joseph M. Brennan

APPENDIX "E"

COLORADO SUPREME COURT

Brennan v. Grover, No. 21678, July 15, 1965

DENIAL OF PLAINTIFF IN ERROR REQUEST FOR ORAL ARGUMENT ON WRIT OF ERROR TO COLORADO SUPREME COURT

Dear Mr. Brennan:

The court today denied your motion for oral aurgument in the above numbered and titled case.

(signed) Florence Walsh

Deputy Clerk

APPENDIX "F"

COLORADO SUPREME COURT

Brennan v. Grover, No. 21678, June 20, 1965

REQUEST FOR ORAL HEARING OF DEFENDANTS IN ERROR

COMES NOW, the Defendants in Error, by their attorneys, GORSUCH, KIRGIS, CAMPBELL, WALKER AND GROVER, and request that the Court grant them an oral argument in the above captioned cause.

(signed) Charles E. Grover

C. E. Eckerman

APPENDIX "G"

CORRESPONDENCE OF PLAINTIFF IN ERROR WITH THE COLORADO SUPREME COURT WHEREIN HE WAS DENIED ALL INFORMATION IN RE THE REQUEST FOR ORAL ARGUMENT ON WRIT OF ERROR AS MADE BY DEFENDANTS IN ERROR

August 17, 1965

Clerk of the Colorado Supreme Court

Re: Brennan vs. Grover, et al, No. 21678 - Appeal. Request for information concerning defendants "REQUEST FOR ORAL ARGUMENT" as made in plaintiff's letter of August 7, 1965.

Dear Sir:

With reference to plaintiff in error letter of

August 7, 1965, wherein clearly understandable and defined requests were made concerning Defendants in Error "REQUEST FOR ORAL ARGUMENT" on the Appeal in the above-captioned cause, plaintiff in error has not received any answer thereto from your office, in fact, your acknowledgement to said letter either evades answering said requests for information as made by plaintiff in error, or otherwise, misapprehends what information relative to said Defendants in Error, "REQUEST FOR ORAL ARGUMENT", as instanced by your reply thereto in your letter of August 9, 1965, and to wit:

CLERK'S OFFICE SUPREME COURT STATE OF COLORADO

Brennan vs. Grover, No. 21678, August 9, 1965
Mr. Joseph M. Brennan
Dear Sir:

The court denied your motion for oral argument in the above numbered and titled case on July 15, 1965 at which time you were notified by letter.

Yours very truly,
RICHARD D. TURELLY, Clerk
(signed) Florence Walsh
Deputy Clerk

Accordingly, request is hereby renewed for the information as requested in said letter of August 7, 1965, from plaintiff in error to your office for the information as specifically requested therein concerning defendants "REQUEST FOR ORAL ARGUMENT" in the above captioned case on Appeal.

Yours very truly
(signed) Joseph M. Brennan

NOTE: The request referred to in said letter of August 7, 1965, was: whether Defendants in Error request for said oral argument was or was not granted, or acted upon by the Court in any manner or form, and the date of any action thereon.

APPENDIX "H"

THE COLORADO REVISED STATUTES CHAP. 31, ART. 11, SEC. 1, IN ACCORDANCE WITH THE UNIFORM STOCK TRANSFER ACT, WHICH IS IN EFFECT IN COLORADO, PROVIDES FOR THE TRANSFER OF A CERTIFICATE OF STOCK AND WHAT IS REPRESENTED THEREBY, AS FOLLOWS:

"(1) By delivery of the certificate indorsed in blank or to a specified person appearing in the certificate to be the owner of such stock, or

(2) By delivery of the certificate and a separate written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby."

APPENDIX "I"

THE COLORADO LARCENY ACT DEFINES A CERTIFICATE OF STOCK, AND ANY PERTINENT DULY EXECUTED SALE, ASSIGNMENT AND TRANSFER INSTRUMENT, AS PERSONAL PROPERTY, RECOVERABLE FROM EITHER THE FELON OR ANYONE IN POSSESSION THEREOF, VIZ:

"LARCENY, PENALTY - 40-5-2: Shall embrace every theft that deprives another of his personal property, or those means or numiments by which the title to property, real or personal, may be ascertained, or the taking or carrying away of any instrument in writing of value to the owner."

"LARCENY, PERSONAL PROPERTY, ACTION TO RECOVER - 40-5-13: All property obtained by larceny, robbery, burglary shall be restored to the owner, and no sale whether in good faith on the part of the purchaser or not, shall divest the owner of his right to maintain his action not only against

the felon, but against any person in whose possession he may find same."

"LARCENY BY BAILEE - 40-5-14: If any bailee, by finding, or otherwise of money, bank bill, or note, or goods, or chattels, shall convert the same to his own use with intent to steal the same, shall be deemed guilty of larceny in the manner as if the original taking had been feloneous."

APPENDIX "J"

COLORADO CONSTITUTION, ART II, SECS. 23 AND 25

Sec. 23: Right to jury trial in Civil Actions.

Sec. 25: Due Process of Law - No person shall be deprived of life, liberty or property, without due process of law.

APPENDIX "K"

IN THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER AND STATE OF COLORADO

* * *(Caption-Civil Action No. B-45641) * * * (Better Industries, Inc. v. Joseph M. Brennan, et al, Filed April 20, 1961).

COMPLAINT

COMES NOW the Plaintiff, by its attorneys, Gorsuch, Kirgis, Campbell, Walker and Grover and for a cause of action against the Defendants states and alleges as follows:

1. That the Plaintiff is a Massachusetts corporation qualified to do business in Colorado, and that it succeeded to the assets and liabilities of MPM Investment Company, a Delaware Corporation

which was qualified to do business in Colorado and which was merged into the Plaintiff December 31, 1961.

2. That on March 31, 1960 MPM Investment Company was the beneficial owner and holder of record of 2,495 of the 2,500 $100.00 par value authorized and outstanding common stock of Rock Wool Insulating Company, a Colorado corporation.

3. That on March 31, 1960, Rock Wool Insulating Company was merged into MPM Investment Company under the provisions of Delaware Code Annotated, Title 8, Corporations, Chapter 1, Section 253 (as amended) and Colorado Session Laws, 1958, Chapter , Section 71 (as amended). The Certificate of Ownership and Merger and Certificate of the Secretary of State of Delaware to carry out said merger is attached hereto as Exhibit "A" and the Article of Merger of Rock Wool Insulating Company into MPM Investment Company and the Certificate of the Secretary of Colorado to carry out said merger is attached hereto as Exhibit "B" both of which by this reference are incorporated herein.

4. That Delaware Code Annotated, Title 8, Corporations, Chapter 1, Section 253 (as amended) and Colorado Session Laws, 1958, Chapter 32, Section 71 (as amended) allow a parent corporation which owns 95 per cent of the outstanding capital stock of a subsidiary (90 per cent under the Delaware statute) to merge the subsidiary corporation into the parent corporation and to provide for the payment for any outstanding shares other than those owned by the parent corporation. Minority shareholders are required to accept the payment provided in the plan of merger unless they preserve

their right to the appraised value of their share under the statutes.

5. That Defendant Joseph M. Brennan was the holder of record March 31, 1960 of 5 shares of the $100.00 par value common stock of Rock Wool Insulating Company represented by Stock Certificate No. 55, that he was given the notice of said merger required by the statutes and failed to preserve his right to appraisal under said statutes.

6. That for the 5 shares of Rock Wool Insulating Company represented by stock Certificate No. 55 there is due and owing the sum of $350.00 per share, a total of $1,750 which the Plaintiff has paid into the registry of this court.

7. That the Defendant Anthony E. Reilly has in his possession or under his control Stock Certificate No. 55 representing said 5 shares of Rock Wool Insulating Company and may claim some interest in said 5 shares or the money deposited in court therefor.

8. That Defendant Frances E. Morrissey claims an interest in said 5 shares of Rock Wool Insultaing Company, or the money deposited in court therefor, by virtue of an Agreement between herself and Defendant Joseph M. Brennan made on or about March 27, 1954, a copy of which is attached hereto as Exhibit "C" and by this reference made a part hereof.

9. That by virtue of the foregoing conflicting claims to said 5 shares, or the proceeds deposited in court therefor, the Plaintiff is uncertain who is entitled to the sums deposited in court and is

unable to obtain Stock Certificate No. 55 for cancellation.

WHEREFORE, the Plaintiff prays that the court determine which of these three Defendants is entitled to the funds deposited in court in payments for Stock Certificate No. 55 representing 5 shares of Rock Wool Insulating Company and that the court enter a judgment that none of the Defendants have any interest in the 5 shares of Rock Wool Insulating Company represented by Stock Certificate No. 55 or in the Plaintiff, and enter an order directing the Defendant, Anthony E. Reilly, to deliver to the Plaintiff Stock Certificate No. 55. The Plaintiff also prays for costs in this action and for such other, further or different relief as the Court deems proper.

GORSUCH, KIRGIS, CAMPBELL, WALKER AND GROVER

(signed) Charles E. Grover

APPENDIX "L"

IN THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER, STATE OF COLORADO

* * *(Caption-Civil Action No. B-76366)* * *

(Filed October 5, 1965)

MOTION FOR AMENDMENT OF REMITTITUR OF THE COLORADO SUPREME COURT OF AUGUST 30, 1965

COMES NOW, Joseph M. Brennan, plaintiff in the above-entitled cause, and hereby moves and requests the Court to effect an appropriate and necessary amendment to the Remittitur in said cause, as issued by the Colorado Supreme Court on August 30,

1965, and as grounds and reasons therefor shows unto the Court as follows:

I. Upon the Appeal herein by Writ of Error to the Supreme Court there was presented a question for decision of the Supreme Court, as follows:

> THAT PLAINTIFF WAS DENIED ANY HEARING ON DEFENDANTS MOTION TO DISMISS THE COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH ANY RELIEF COULD BE GRANTED (Plaintiff's Brief, page 4, par 1). And, at page 14, last par. thereof: THE DISMISSAL OF PLAINTIFF'S COMPLAINT IN REPLEVIN, IN THE CIRCUMSTANCES CONCERNING THE WRONGFUL DETENTION OF PLAINTIFF'S STOLEN PERSONAL PROPERTY BY DEFENDANTS, IS REPUGNANT TO THE UNITED STATES SEVENTH AND FOURTEENTH CONSTITUTIONAL AMENDMENTS, AND IN VIOLATION OF SECTIONS 23 AND 25 OF ARTICLE II OF THE COLORADO CONSTITUTION, AND THE BILL OF RIGHTS, AND WHICH NOW STANDS AS UNJUSTIFIED AND IRREPARABLE INJURY AND DAMAGE TO PLAINTIFF, ALL OF WHICH REQUIRES GRAVE JUDICIAL COGNIZANCE AND APPROPRIATE CORRECTION.

II. A copy of Plaintiff's Brief as submitted on Writ of Error to the Colorado Supreme Court is appended hereto, and by reference hereby made a part hereof as though set forth in full herein.

III. WHEREFORE, it is hereby requested that said Remittitur be amended, and that when same is amended and returned it will be amended by adding thereto the following, viz:

UPON THE APPEAL HEREIN THERE WAS PRESENTED AND NECESSARILY PASSED UPON: - SPECIFIED QUESTIONS UNDER

THE CONSTITUTION OF THE UNITED STATES AND THE CONSTITUTION OF THE STATE OF COLORADO, AND PARTICULARLY THE QUESTION: WAS PLAINTIFF DENIED THE DUE PROCESS OF LAW IN DENYING HIM ANY HEARING ON DEFENDANTS MOTION TO DISMISS PLAINTIFFS COMPLAINT? The requested amendment to said Remittitur shall affirmatively state whether plaintiff was or was not denied the due process.

(signed) JOSEPH M. BRENNAN
Plaintiff, Pro se

IN THE SUPREME COURT OF THE STATE OF COLORADO
No. 21678
(NOTICE & MOTION IN RE: FILING OF PETITION FOR WRIT OF CERTIORARI TO UNITED STATES SUPREME COURT)
(Filed October 7, 1965)

COMES NOW, Joseph M. Brennan, plaintiff in error in the above-entitled case, and hereby gives notice of his intention of Petitioning the Supreme Court of the United States for a Writ of Certiorari, concerning the judgment of decree in the above-entitled cause.

Accordingly, it is hereby requested that the within Certified Record as transmitted to this Court from the District Court in and for the City and County of Denver, Colorado, be released by this Court and delivered to plaintiff in error to permit his preparation of his said Petition for Writ of Error to the Supreme Court of the United States. And, that said Record shall be duly certified by this court.

It is further requested that ten copies of the various Briefs, as have been delivered to and filed in this Court, be released and delivered to plaintiff in error.
(Signed) Joseph M. Brennan, Plaintiff in Error.